

New Strata Managing Agent Licensing Rules – Do Support Staff Need a Licence?

For an overview of the new rules, please read our article [Real Estate Industry Reforms – Implications for the Strata Sector](#).

Some agencies are becoming concerned about whether administrative staff need to be licenced. This is a genuine concern, due to the lack of clear definitions in the legislation. However, under the amendments commencing on 23 March 2020, the licence categories have changed, but the definitions have not. Accordingly, if this is an issue, it always has been and does not result from the amendments.

There is no clear specification of the activities which attract the licensing requirements. Instead, the legislation refers to:

1. For licence (as from 23 March 2020, class 2 licensee) requirements - “acting as a strata managing agent”, strata managing agent being defined as “a person who exercises any function of an owners corporation”.
2. For certificate of registration (as from 23 March 2020, assistant licensee) requirements – “act as or exercise any functions of a registered manager”, registered manager being defined as “a person who, as an employee of a strata managing agent exercises any of the functions of a strata managing agent” and strata managing agent being defined as “a person who exercises any function of an owners corporation”.

Our take on this:

1. There is a real problem with those definitions, as both categories loop back to “exercise any function of an owners corporation”, suggesting that a person may be a strata managing agent and require a class 2 licence if they “exercise any functions of an owners corporation”. Perhaps, notwithstanding the definition of strata managing agent, the reference to a class 2 licensee being someone “acting as a strata managing agent” limits the requirement of a class 2 licence to persons performing the industry recognised role of strata managing agent. Also, the new PSAA Clause 4C will limit what each can do within the agency, i.e. a class 2 licensee can’t authorise the withdrawal of money from a trust account and an assistant agent additionally can’t enter into an agency agreement or affix the OC seal.
2. There is also a problem with identifying what an OC function is and whether an agent is exercising that function.
3. As to OC functions, there is no exhaustive definition in the SSMA, but there is:

- a. A general definition in SSMA Sections 10 and 4 to the effect that OC function includes “any power, authority or duty” imposed on the OC “by [the SSMA] or any other act”. That seems to invoke SSMA Section 9, setting out OC responsibilities as follows:
- 1) *The owners corporation for a strata scheme has the principal responsibility for the management of the scheme.*
 - 2) *The owners corporation has, for the benefit of the owners of lots in the strata scheme--*
 - a) *the management and control of the use of the common property of the strata scheme, and*
 - b) *the administration of the strata scheme.*
 - 3) *The owners corporation has responsibility for the following--*
 - a) *managing the finances of the strata scheme (see Part 5),*
 - b) *keeping accounts and records for the strata scheme (see Parts 5 and 10),*
 - c) *maintaining and repairing the common property of the strata scheme (see Part 6),*
 - d) *taking out insurance for the strata scheme (see Part 9).*
- b. A partial definition in SSMA Section 13, dealing with functions that can only be delegated to the SC or SMA, as including:
- preparation of administrative and capital works funds estimates.
 - levying of contributions.
 - receiving, banking or accounting for money paid to the OC.
 - having custody of any money paid to the OC or making payments from any such money.
 - taking out of insurance.
 - conduct of OC meetings and handling of correspondence.
 - maintenance of OC records.

That suggests that an OC function is anything an OC is required or permitted to do under any legislation.

4. As to exercising a function, we consider that the critical issue, but there is no definition of “exercise” in the legislation. Dictionary definitions refer to putting a right or power into action, use or effect.

That may suggest some level of decision making and control.

5. Applying that to common scenarios:

- a. Receptionists

- b. Accounting staff
- c. Data entry staff, possibly “off shore”.

Two answers:

- d. Read literally, one could argue that all agency staff are potentially caught, given the breadth of functions like “handling of correspondence” and “maintenance of records”.
- e. The better view, both our opinion and what seems to be the industry consensus view, is that some level of causation is required, i.e. causing the relevant activity to be undertaken. This would involve some level of independent discretion & decision making, in relation to both the OC client and within the agency business. On this view, decision makers would be caught and persons performing specific tasks under direction would not.

Fair Trading NSW in conjunction with SCA (NSW) have also issued guidelines on this topic. Please see link below.

[Best Practice Guide – Licensed or Administrative Tasks.](#)

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